

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment, and after adoption, the final regulations are published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year.

The amendments to the FMCSR and the HMR that have become final and effective since the 2009 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMR

Parts 107, 171, 172, 173, and 180 (FR Vol. 74, No. 199, Pages 53182-53189), 10-16-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) adopts editorial corrections and makes minor regulatory changes to improve provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes and do not impose new requirements. Effective Date: October 16, 2009.

Part 172 (FR Vol. 74, No. 200, Pages 53413-53423), 10-19-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to clarify requirements governing emergency response information services provided by arrangement with hazardous materials offerors (shippers). In order to preserve the effectiveness of these arrangements for providing accurate and timely emergency response information, PHMSA is requiring basic identifying information (offeror name or contract number) to be included on shipping papers. This information will enable the emergency response information provider to identify the offeror for which the emergency response information provider is accepting responsibility for providing emergency response information in the event of a hazardous materials incident and to obtain additional information about the hazardous material as needed. Effective Date: November 18, 2009*, with voluntary compliance authorized starting November 18, 2009. (*The effective date was published erroneously and then corrected on 10-22-09, as noted in the following Federal Register Docket.)

Part 172 (FR Vol. 74, No. 203, Page 54489), 10-22-09

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) corrected the erroneous effective date of November 18, 2009, published on Page 53413 of Volume 74, Number 200. The effective date is October 1, 2010. Voluntary compliance remained authorized starting November 18, 2009.

Parts 390, 392, and 396 (FR Vol. 74, No. 248, Pages 68703-68709), 12-29-09

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends its December 17, 2008, final rule implementing Section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The December 17, 2008, final rule makes intermodal equipment providers (IEPs) subject to certain Federal Motor Carrier Safety Regulations (FMCSRs) and establishes shared safety responsibility among IEPs, motor carriers, and drivers. These amendments create a fifth marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of intermodal equipment (IME) in response to a petition for reconsideration from the Intermodal Association of North America (IANA); clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from the Ocean Carrier Equipment Management Association (OCEMA); and extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections in response to a petition filed by OCEMA. Effective Date: December 29, 2009.

Implementation Date: IEPs must establish systematic inspection, repair, and maintenance programs, record-keeping systems and identify their operations by submitting Form MCS-150C by December 17, 2009, except for the requirements of Sections 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d), which they must comply with by June 30, 2010. IEPs must mark their intermodal chassis with their legal name or a single trade name and a USDOT identification number by December 17, 2010.

Part 390 (FR Vol. 75, No. 20, Pages 4996-5002), 02-01-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for direct compensation comply with safety regulations regardless of the distance traveled. Specifically, this rule makes FMCSRs applicable to the operation of such vehicles when they are operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. Motor carriers, drivers, and the vehicles operated by them will be subject to the same safety requirements imposed upon such vehicles when they are operated beyond a 75-air-mile radius. This action is required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Effective Date: May 3, 2010, with compliance with this rule required no later than June 1, 2010.

Parts 171, 172, 173, and 178 (FR Vol. 75, No. 21, Pages 5376-5403), 02-02-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the packaging requirements in the Hazardous Materials Regulations to enhance compliance flexibility, improve clarity, and reduce regulatory burdens. Specifically, the amendments revise several packaging-related definitions; add provisions to allow more flexibility when closure instructions are prepared and transmitted, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that will allow for a practicable means of stenciling the "UN" (United Nations) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or whether the change in packaging may be considered a variation of a previously tested design. This final rule also incorporates requirements for construction, maintenance, and use of Large Packagings. Effective Date: October 1, 2010. Voluntary compliance is authorized starting March 4, 2010.

Part 172 (FR Vol. 75, No. 45, Pages 10974-10989), 03-09-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA), in consultation with the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS), modifies the current security plan requirements applicable to the commercial transportation of hazardous materials by air, rail, vessel, and highway. Based on an evaluation of the security threats associated with specific types and quantities of hazardous materials, the final rule narrows the list of materials subject to security plan requirements and reduces associated regulatory costs and paperwork burdens. The final rule also clarifies certain requirements related to security planning, training, and documentation. Effective Date: October 1, 2010. Voluntary compliance with this final rule is authorized as of April 8, 2010.

Part 107 (FR Vol. 75, No. 60, Pages 15613-15620), 03-30-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the statutorily mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. PHMSA is increasing the annual fee of \$975 (plus a \$25 administrative fee) to \$2,575 (plus a \$25 administrative fee) for registrants not qualifying as a small business or not-for-profit organization for registration years 2010-2011 and following years. The increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately \$28,300,000 in accordance with the Administration's Fiscal Year 2010 budget and proposed Fiscal Year 2011 budget. Effective Date: April 29, 2010.

Parts 385, 395, and 396 (FR Vol. 75, No. 64, Pages 17208-17252), 04-05-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after June 4, 2012. On-board hours-of-service (HOS) recording devices meeting FMCSA's current requirements and installed in CMVs manufactured before June 4, 2012, may continue to be used for the remainder of the service life of those CMVs. Motor carriers that have demonstrated serious noncompliance with the HOS rules will be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determines, based on HOS records reviewed during a compliance review, that a motor carrier has a 10 percent or greater violation rate for any HOS regulation listed in the new Appendix C to Part 385, FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs regardless of their date of manufacture and use the devices for HOS record keeping for a period of two years, unless the carrier (i) already equipped its vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency's current requirements under 49 CFR 395.15 prior to the finding, and (ii) demonstrates to FMCSA that its drivers understand how to use the devices. The FMCSA also changes the safety fitness standard to take into account a remedial directive when determining fitness. Effective Date: June 4, 2010. Compliance Date: Motor carriers must comply with this final rule by June 4, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 2010.

Parts 107, 171, 173, and 177 (FR Vol. 75, No. 93, Pages 27205-27216), 05-14-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations as long as an equivalent level of safety is maintained. The revisions in this final rule are intended to provide greater regulatory flexibility regarding special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Effective Dates: October 1, 2010. Voluntary Compliance: Voluntary compliance with the provisions of this final rule is authorized June 14, 2010.

Part 391 (FR Vol. 75, No. 98, Pages 28499-28502), 05-21-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) regulations implementing Section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) relating to medical certification requirements of CMV drivers and the submission of medical certification documents to the State Driver Licensing Agency (SDLA) links medical qualification information with the Commercial Driver License (CDL). The purpose of this rule is both to make amendments responding to petitions for reconsideration and to make technical corrections to the FMCSA regulations. Effective Date: May 21, 2010. Compliance and implementation date is January 30, 2012.

Part 390 (FR Vol. 75, No. 161, Pages 51419-51420), 08-20-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) extends to June 30, 2011, the June 30, 2010, compliance date of its December 29, 2009, final rule concerning the inspection, repair, and maintenance of intermodal equipment (IME), specifically with respect to the requirement for drivers and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of IME even if no damage, defects, or deficiencies are discovered by, or reported to, the driver. (Sec. 390.42(b)). This action is being taken to provide the Agency with sufficient time to address an issue raised in a petition for rule making submitted on March 31, 2010, by the Ocean Carrier Equipment Management Association (OCEMA) and the Institute of International Container Lessors (IICL). The requirements for intermodal equipment providers (IEPs) to have in place inspection, repair and maintenance programs, and a process for receiving and taking appropriate action in response to DVIRs on which damage, defects, or deficiencies are reported remain in effect. Compliance Date: June 30, 2011.

Parts 107, 171, 172, 173, 177, and 180 (FR Vol. 75, No. 169, Pages 53593-53598), 09-01-10

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends the Hazardous Materials Regulations to correct editorial errors and makes minor regulatory changes to improve clarity. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes and do not impose new requirements. Effective Date: October 1, 2010.

Parts 385 and 395 (FR Vol. 75, No. 176, Pages 55488-55491), 09-13-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) amends its April 5, 2010, final rule that established new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs). FMCSA amended requirements relating to the temperature range in which EOBRs must be able to operate and the connector type specified for the Universal Serial Bus (USB) interface. Effective Date: September 13, 2010.

Part 393 (FR Vol. 75, No. 182, Pages 57393-57396), 09-21-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) makes permanent the existing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that trailers with antilock brake systems (ABS) be equipped with an external malfunction indicator lamp. The existing indicator lamp requirement was originally scheduled to sunset on March 1, 2009, but the National Highway Traffic Safety Administration (NHTSA) published a final rule on August 25, 2009, making permanent the requirement in the Federal Motor Vehicle Safety Standards (FMVSSs) that manufacturers equip trailers with ABS and an external antilock malfunction indicator lamp. This final rule makes the FMCSRs consistent with the August 2009 NHTSA final rule. Effective Date: November 22, 2010.

Parts 390, 391, and 392 (FR Vol. 75, No. 186, Pages 59118-59136), 09-27-10

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) adds texting while driving to the list of disqualifying offenses under state or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV and imposes sanctions, including civil penalties and disqualification from operating CMV for drivers who fail to comply with this rule. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA amends its commercial driver's license (CDL) regulations to state or local traffic laws or

ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Effective Date: October 27, 2010.

Parts 171, 173, and 178 (FR Vol. 75, No. 189, Pages 60333-60340), 09-30-10

On February 2, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the Hazardous Materials Regulations (HMR) to: revise several packaging-related definitions; add provisions to allow more flexibility when closure instructions are prepared and transmitted, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the United Nations (UN) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or whether the change in packaging may be considered a variation of a previously tested design. The February 2, 2010, final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings. This final rule responds to one petition for reconsideration and four appeals submitted in response to the February 2, 2010, final rule and also corrects several errors that occurred in that rule making. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. Effective Date: October 1, 2010.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: steven.bowman@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than March 29, 2011.

A meeting to hear requested oral presentations is scheduled for Wednesday, March 30, 2011, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by April 11, 2011.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2009~~ 2010).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2009~~ 2010).